

January 10, 2012

Edward Riffle
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Milpitas, CA 95035

Ed.Riffle50@gmail.com

Re: Your Request for Advice
Our file No. A-11-245

Dear Mr. Riffle:

This letter is in response to your request for advice regarding the campaign provisions of the Political Reform Act (the "Act").¹

Please note that our advice is based solely on the provisions of the Act. We therefore offer no opinion on the application, if any, of other conflict-of-interest laws such as common law conflict of interest or Government Code Section 1090. In addition, the Commission will not advise with respect to past conduct. (Regulation 18329(b)(8)(A).)

QUESTION

You have asked whether new Section I-210-5.20 of the Milpitas Campaign Ordinance conflicts with state law because it requires a reporting above and beyond what the FPPC requires?

CONCLUSION

Section I-210-5.20 would be invalid under Section 81009.5 of the Act.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The Regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

ANALYSIS

Section 81009.5 of the Act provides:

“(a) Any local government agency which has enacted, enacts, amends, or repeals an ordinance or other provision of law affecting campaign contributions and expenditures shall file a copy of the action with the Commission.

“(b) Notwithstanding Section 81013, no local government agency shall enact any ordinance imposing filing requirements additional to or different from those set forth in Chapter 4 (commencing with Section 84100) for elections held in its jurisdiction unless the additional or different filing requirements apply only to the candidates seeking election in that jurisdiction, their controlled committees or committees formed or existing primarily to support or oppose their candidacies, and to committees formed or existing primarily to support or oppose a candidate or to support or oppose the qualification of, or passage of, a local ballot measure which is being voted on only in that jurisdiction, and to city or county general purpose committees active only in that city or county, respectively.”

In the *In re Olson* (2001) 15 FPPC Ops. 13, the Commission described the rationale for the statute. Section 81009.5 provides a uniform approach to filing requirements for candidates and committees active throughout the state while simultaneously preserving flexibility for local jurisdictions to regulate their local candidates and committees. “The statewide concern at issue here is statewide uniformity of filing requirements imposed by state law on persons running statewide campaigns; more specifically, the concern is that a person running such a campaign may easily and logically determine where to file the reports and statements required by the Act. It seems self-evident that designating in state law a particular, easily identified person to receive the filings is reasonably related to that end.” (*Moll* Advice Letter, No. A-96-315.)

The Commission also considered the scope of this statute in *In re Olson*. The described part of the Los Angeles ordinance as follows:

“Ordinance 173929 also requires any person who makes or incurs payments of more than \$1,000 for member communications to notify the City Ethics Commission by fax, e-mail or telegram within 24 hours each time such payment is made or incurred. In addition, it requires each person who made or incurred payments of more than \$1,000 for member communications between April, 2001 and the effective date of the ordinance to notify the City Ethics Commission within 72 hours of the effective date. The 24-hour and 72-hour notices must contain specific information about the payor, the payee and the candidate supported or opposed.”

The Commission went on to conclude that this requirement, though not a required campaign form, was a filing requirement. They stated:

“The new ordinances are subject to section 81009.5. Ordinance 173930 requires a report to be filed with the Los Angeles City Ethics Commission so it clearly is within the purview of this section. The notifications required by Ordinance 173929 are also filings since such notifications must be made to the City Ethics Commission.”

The Milpitas ordinance in question² provides I-210-520

“Any Independent Expenditure Committee, as that term is defined in Government Code Section 82031, that is in active participation in local City of Milpitas elections, shall comply with this Section. Active participation is defined as making an expenditure of \$100 or more in support of or in opposition to a candidate in a Milpitas election. Any Independent Expenditure Committee actively participating in a Milpitas election required to file Form 461 or other campaign statement by law shall verbally notify the City Clerk of the City of Milpitas of the time and place of filing such Form at the time it is filed.”

In the case of the Milpitas proposed ordinance, the only question in light of the *Olson* opinion is whether the verbal notification requirement is a filing. It can be argued that the Olson opinion required a tangible or intangible fixed message (electronic or written). However, Section 81003 provides that: “This title should be liberally construed to accomplish its purposes.” To permit an ordinance to require a verbal notification and not an email notification would seem to be a distinction with little difference. In light of the Commission’s view that the purpose of the statute is to maintain a uniform approach to filing requirements for candidates and committees active throughout the state on persons running statewide campaigns, we believe that the verbal notification requirement is a “filing” requirement and would be invalid under Section 81009.5.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini
General Counsel

by: John W. Wallace
Assistant General Counsel
Legal Division

JWW:jgl

² Your question was limited to Section I-210-520 and did not involve the rest of the ordinances. Therefore, we have not reviewed the other sections.